IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	
v.	)	ID#: 0503014528
	)	
ROBERT C. WOOD,	)	
	)	
Defendant.	)	

Submitted: December 3, 2009
Decided: March 31, 2010

ORDER

Upon Defendant's Motion to Dismiss – *GRANTED*

1. On March 20, 2005, Defendant was arrested for driving under the influence (4th offense). He was indicted on April 4, 2005.

2. Defendant was convicted by a jury on September 16, 2005, and placed under pretrial supervision. He was to be supervised pending sentencing as if on Level III probation. Also, a pre-sentence investigation was ordered.

3. On November 7, 2005, subpoenas were issued for sentencing on November 18, 2005.

4. Before the scheduled sentencing, Defendant filed a motion for judgment notwithstanding the verdict, or in the alternative, a new trial, which the court denied on February 28, 2006. Thus, Defendant was eligible for sentencing then. Meanwhile, because Defendant had filed a post-trial motion, the November 18, 2005 sentencing was aborted.

5. Defendant was not rescheduled for sentencing until December11, 2009, forty-six months after the post-trial motion's denial.

6. In his motion to dismiss, Defendant offers six, specific ways he suffered prejudice through lost opportunities while awaiting sentencing. Defendant, however, did nothing to precipitate his being sentenced. Thus, his specific claims of prejudice are belied by his inaction. Defendant undeniably knew that sentencing was in the offing. He probably was content to wait, and hope for this opportunity. Nevertheless, as Defendant also observes, sentencing has been "'hanging over his head,' for over four years."

7. Since Defendant's post-trial motion was denied in 2006, the State also has done nothing to precipitate Defendant's sentencing. The State's position is:

> The State was not aware that the Defendant still needed to be sentenced until notice of the December 11, 2009 sentencing date was received. Had the State been aware, a letter

> requesting that the sentencing be scheduled would have been sent to the Court.

Nonsense. The State is charged with knowledge that Defendant had not been sentenced. Moreover, the State, as plaintiff, moves a defendant's sentencing. The State has a duty to prosecute from start to finish.

8. Although the State could, and should, have filed a motion to have Defendant sentenced shortly after the post-trial motion was decided, the court, as master of its docket, also is to blame.

9. Defendant was under pretrial supervision since September 16, 2005. Since then, he has completed court-ordered treatment, including the PACE DUI program, the Pathways DUI program and an inpatient treatment program in Florida. (It also appears that he has stayed out of trouble since his arrest five years ago, on March 20, 2005.) In summary, at any point after February 2006, Defendant, the State, the court, or the pretrial services office could have brought about Defendant's sentencing.

10. According to the State, the delay was caused by Defendant's post-trial motion and litigation in the Court of Common Pleas concerning Defendant's status as a habitual offender under the motor vehicle code. While it is true that Defendant's motion accounts for the three month delay from November 18, 2005 until February 26, 2006, what happened in the Court of Common Pleas had no bearing on

Defendant's sentencing. The litigation over Defendant's driving privileges should not have delayed sentencing, and the State has not pointed to anything else Defendant did that caused delay after February 2006.

11. The outcome here is squarely controlled by *Harris v. State*.[1] There, to decide Harris's speedy trial claim based on delayed sentencing, the Supreme Court of Delaware, itself, balanced the four factors articulated in *Barker v. Wingo*[2] for deciding denial of speedy trial claims. Now, this court will undertake the same, four-step balancing test.

12. First, the delay was extraordinary. This delay was four years, versus six and one-half years in *Harris*. Second, the delay since February 2006 was not deliberate. As in *Harris*, the delay was benign. Third, like Harris, Defendant chose not to assert his right to speedy sentencing. As in *Harris*, Defendant prompted the initial delay. Were it not for his post-trial motion, Defendant would have been sentenced on November 18, 2005, and, like Harris, Defendant did not call attention to the delay until he received notice of his new sentencing date. (A distinction here may be that Defendant allegedly told his pretrial supervisor that Defendant's lawyer was aware of the delay.) Finally, as in *Harris*, any prejudice from the delay was

[1] 956 A.2d 1273 (Del. 2008).

[2] 407 U.S. 514, 530 (1972), *cited in Harris*, 956 A.2d at 1274.

neutralized by Defendant's having gained mitigating evidence demonstrating that he could obey the law while being supervised in the community. That includes his completing inpatient and outpatient treatment programs.

13. Again, in effect, Defendant served four years under Level IV and Level III-style supervision. Had he been sentenced, he would have been imprisoned, but the ensuing probation would have been much shorter. Even without this conviction, Defendant remains a felon for repeat DUIs. Taking everything into account, Defendant should have served time in 2006 for what he did in 2005, and he should have been off probation in 2007 or 2008. Instead, Defendant is still under supervision in 2010.

14. There is little meaningful distinction between the facts here and in *Harris*. And so, there is no principled basis to reach a different conclusion from the one reached in *Harris*. Accordingly, as it was in *Harris,* Defendant's right to speedy sentencing has been violated. His conviction must be **VACATED** and the charge **DISMISSED**.

IT IS SO ORDERED.

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Judge

oc: Prothonotary (Criminal)
pc: Greg Strong, Deputy Attorney General
Louis B. Ferrara, Esquire